K 1947. (K) File No. O. Essen. Supplies (T.P.)/47

Legal DEPARTMENT

A BRANCH

SP 23/5

Subject:—

Opinions under Essential Supplies (Temporary Powers) Ordinance and Act, 1946.

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47

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III-A

CONTENTS

Legal Department File .O. Essential Supply(TP)/47

Sr. No.	Compilation No.	Subject	Pages
1.	O.N. 1384 11-2-47	Essential Supplies (T.P.) Act, 1946- Section 4(b) whether Provincial Govt. is empowered to make orders by notification	1-5.
2.	O.N. 1256 7-2-47	Clause 2(a) (ii) (iii) whether rags are included in textiles.	7.
3.	O.N. 1241 6-2-47	Whether foodgrains collected from house to house and meals taken together would come within the pur-view of C.S.D. Order No.390/VI dt.6-5-46.	9.
4.	O.N. 1338 10-2-47.	Ban on polishing of rice.	11.
5.	O.N. 2349 10-3-47	D. of I. Rules - 81(2)(bc) Whether orders requiring Mills to maintain ration shops can be passed.	13-14.
6.	O.N. 4090 22-4-47	Essential Supplies (T.P.) Act, 1946 Sec 2(c).	15.
7.	O.N. 3259 3-4-47	Whether the B'bay Govt can ask the Rly., to rebook the consignment.	17-18.
8.	O.N. 4569 5-5-47.	Sec 3(2)(f)-- Whether order can be made requiring the dairy owners to milk their milch cattle.	19.
9.	O.N. 209 8-1-47.	Whether Copra (cocoanut) would be covered as a foodstuff.	21.
10.	O.N. 7336 17-7-47	B'bay Rationing Regulations,1943- Failure on the part of person to deliver Ration Cards to the Authority for cancellation.	23-25.
11.	O.N. 8397 14-8-47.	Section 7(1)- Providing penalty for the contravention of any order.	27-29.
12.	O.N. 9009 5-9-47.	Section 3(2)(j) --Whether power of entering premises implies power to break open a lock if necessary.	31.
13.	O.N. 8913 2-9-47.x	Section 3(2)(a)-- Whether the proposed licensing system can be introduced under the	

C O N T E N T S

Legal Department File O.Essl.Supplies(T.P.) /47.

Sr. No.	Compilation No.	Subject	Pages
		~~made the.~~	~~38.~~
14.	O.N. 9323 19-9-47.	Whether it is legally feasible to impose a ban on the export of ground nut cake.	35.
15.	O.N. 11369 28-11-47	Whether the Sevice of refreshments at the function would be hit by the C.S.D. order banning the seving of foods.	37-39.
16.	O.N. 11765 8-12-47-	Filing of an appeal	41.
17.	O.N. 7827 29-7-47	Prosecnting of a person for attempting to contravene Govt. order re. foodstuffs	43-46.
18.	O.N. 9010 5-9-47.	Whether any action can be taken if the evidence for prosecution is discrepant.	47-48.

JPE. 8/5/56.
5 copies.

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Office of the R.L.A.

Clause (b) of section 4 of the Essential Supplies (Temporary Powers) Act, 1946, provides that the Central Government may by notified order direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by the Provincial Government or such officer or authority subordinate to a Provincial Government, as may be specified in the direction. In para 3 of his opinion No. 8231 dated 20th November 1946, the R.L.A. opined:-

"From clause (b) of section 4 it will be evident that unless the Central Government has, by notified order, delegated its power to make orders under section3, neither the Provincial Government nor any officer or authority subordinate to the Provincial Government can automatically make an order under section 3. Therefore, unless under section 4(b) the Central Government has delegated its power to make Orders under section 3 to the Deputy Secretary, Civil Supplies Department, or the Food Controller, that Officer cannot exercise those powers".

Commenting on this the Under Secretary, Civil Supplies Department, observes:-

"By the Notification of the Government of India, Department of Food, No.P.Y. 603(2)/I, dated the 21st October 1946, which although issued under the Ordinance, still continues to be operative, the Provincial Government has been authorised to exercise some of these powers subject to certain conditions. With reference to para.3 of the R.L.A.'s note, dated the 20th November 1946, it may be observed that by that Notification the Central Government has not delegated its power to make notified orders to the Deputy Secretary, Civil Supplies Department,

or the Food Controller, but neitherdoes the Notification delegate any power to the the Secretary, or one of the Joint Secretaries, Civil Supplies Department, The Notification recognises only the Provincial Government as the authority competent to exercise the delegated powers. If it is necessary to delegate powers to the Secretary and other high Secretariat Officers of the Civil Supplies Department. The Notification of the Government of India shows that Government does not take that view and considers it sufficient to mention only the Provincial Government in its Notification. Presumable, therefore, the Secretary as part and parcel of the Provincial Government, is competent to exercise the delegated powers; and if the Secretary is competent, the Deputy Secretary as such is so (subject of course, to the nonobservance of the proper procedure by submitting the case to the higher authority). The R.L.A. is requested to confirm this presumption".

2. "Provincial Government" in a Governor's Province means a Governor acting or not acting in his discretion and exercising or not exercising his individual judgment according to the provisions in that behalf made by or under the Government of India Act, 1935. (See section 3(43a) of the General Clauses Act, 1897). Section 49(1) of the Government of India Act, 1935, provides:-

"(1) The Executive authority of a provicne shall be exercised on behalf of His Majesty by the Governor, either directly or thmrough officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge, or officer or any local on other authority."

"(2) Subject to the provisions of this Act,

the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws."

Section 59 provides:-

(1) All executive action of the Government of a province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governer shall be authenticated in such manner as may be specified in rules to be made by the Governer, and the validity of an order or insturment which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provinvial Government, and for the allocation among ministers of the said business in so far as it is not business with repect to which the Governor is by or under this Act required to act in his discretion.

(4) .....(5).....".

Rules of Business have been framed by the Governor of Bombay under section 59. Rules 12 of those rules provides:-

"All orders or instruments made or executed by order or on behalf of the Government of Bombay shall be expressed to be made by or by order of the Governor of Bombay".

Rule 13 provides:-

"Save in cases where an officer has been specially empowered to sign an order or instrument of the Government of Bombay, every such order or instmrument shall be signed by either the Secretary,

the Joint Secretary, the Deputy Secretary, the Under Secretary, or the Assistant Secretary to the Government of Bombay and such signatures shall be deemed to be the proper authentication of such order or instrument."

In Emperor vs. Sibnath Banerji, the Privy Council has held that under section 49(1) of the Government of India Act, 1935, the Governor may be reponsible for the action of his subordinates taken in his name. It is therefore apparent that if a Secretary of any Department of the Secretariat is exercising the powers of the Governor vested in him by the aforesaid Notification of the Government of India, the Order which he passes will have to be made in the name of the Governor and the Governer would remain repponsible for such Order. It is therefore apparent that the Secretary of any Departmen does not exercise those powers of the Provincial Government by virtue of any delegation in the sense in which it is ordinarily understood as assumed by the Under Secretary, Civil Supplies Department. As stated above the Order of the Secretary will be in the name of the Governor. If the Governor has no objection to take the responsibility arising out of the exercise of powers under the Notification by the Deputy Secretary, there will be no objection to the Deputy Secretary passing orders thereunder in the name of the Governor, and to authenticate such orders under rule 13 of Rules of Business. Such exercise of powers was not however contemplated by the R.L.A. in his opinion dated 20th November 1946. It may, however, be stated that if powers have been delegated to the officers such as Secretary, Deputy Secretary, etc., by direction under clause (b) of section 4 of the Essential

Supplies(Temporary Powers) Act, 1946, such officers would be exercising these powers by virtue of delegation and the orders will have to be passed by them in their own name and the Governor of the Province will not be responsible for their acts. It is for Government to decide which of these courses would be more convenient and safe.

O.C. Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 1384, dated the 11th February 1947.

JPE. 8/5/56. 4copies.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether rags are included in "textiles" and waste paper in "paper" under sub-clauses (ii) and (iii) of clause (a) of section 2 of the Essential Supplies (Temporary Powers) Act, 1946 "cotton and woolen textiles" and "paper" are essential commodities. These terms have not been defined in the Act. However, rags and waste paper cannot be considered essential commodities although they may be useful for certain purposes. Consequently they cannot be deemed to be included in the term "cotton and woollen textiles" and "paper" under sub-clauses (ii) and (iii) of clause (a) of the Essential Supplies (Temporary Powers) Act, 1946.

O.C. Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 1256, dated the 7th February 1947.

JPE 8/5/56. 4copies.

Office of the R.L.A.

It appears that at Wai in Satara District every year there is some religious festival. Foodgrains are collected from house to house and meal prepared from such foodgrains is taken together by the people on the day of the festival as Maha Prasad. The question for consideration of the R.L.A. is whether such case would come within the purview of Government Order, Civil Supplies Department,No.390/VI dated 6th May 1946.

2. The answer is in the affirmative. The Government Order dated 6th May 1946 which applies to the whole of the Province of Bombay except the City of Bombay and Bombay Suburban District, inter alia, provides that no person or body of persons acting in concert in connection with any religious function shall on any day, except under the authority of a written permit granted by the District Magistrate concerned, provide for consumption or accept for service or distribution for consumption any eatables to twenty five or more persons. The persons who would take the meal in connection with the religious function would not bring their rations. They will be provided meal from the rations collected from house to house. The case would therefore come within the purview of the Order.

O.C. Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 1241, dated the 6th February 1947.

JPE. 8/5/56. 4copies.

Office of the R.L.A.

"The words such directions as may be given by the Director of Civil Supplies, Bombay, by a general or special order" in clause 4 of the license form II prescribed under the Bombay Rice Mills Licensing Order, 1943, are very wide. Consequently there appears no objection to the Director of Civil Supplies issuing a special or general direction under that provision requiring the Mill or Mills not to give any polish to rice.

O.C.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

U.O.R. to C.S.D. No. 1338, dated the 10th February 1947.

JPE. 8/5/56.
4 copies.

Office of the R.L.A.

It appears that Government had served orders under rule 81(2)(bc) of the Defence of India Rules in the form at p.125 on certain Mills and Factories in Bombay requiring them to maintain ration shops for their employees and their dependents. The question raised for consideration of the R.L.A. are (1) whether these orders continue to be in force and (2) whether similar orders can now be passed on any such concern under the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946).

Rule 81(2)(bc) of the Defence of India Rules empowered Government to issue an Order requiring any employers or class of employers to supply to all or any class of their employees and to all or any class of dependents of such employees such essential articles in such quantities and at such prices as may be specified in the Order. Certain provisions of the Defence of India Rules have been continued in force after 30th September 1946 by the Emergency Provisions (Continuance) Ordinance, 1946 (XX of 1946). But so far as the question of rationed articles is concerned the provisions of rule 81(2) of the Defence of India Rules lapsed on 30th September 1946. By section 5 of the Essential Supplies (Temporary Powers) Ordinance, 1946 (XVIII of 1946) only those orders relating to foodstuffs and other essential commodities made under rule 81(2) which were in repect of any matter specified in section 3 of the Ordinance were continued in force after 30th September 1946 and the same orders have now been continued in force under section 17 of the Essential Supplies (Temporary Powers) Act, 1946. But the order in question at page 125 requiring the employer to maintain ration shop for his employees and their dependents does not fall under any of the matters sepcified in section 3 of the Ordinance and is not therefore continued in force after 30th September 1946. Such orders have lapsed and there is no power under the Essential Supplies (Temporary Powers) Act, 1946, to make such orders. The view taken in paragraph 3 of the Controller of Rationing's Office note dated 10thFebruary 1947 at pages 127-128 is correct.

O.C.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

U.O.R. to C.of R.'s Office No.2349, dated the 10th March 1947.

Office of the R.L.A.

The question for R.L.A.'s consideration is whether "tamarind" can be considered as "foodstuffs" within the menaing of clause (c) of section 2 of the Essential Supplies (Temporary Powers) Act, 1946.

The term "foodstuffs" as defined in clause (c) of section 2 of the Essential Supplies (Temporary Powers) Act, 1946, includes odible oilseeds and oils. The use of word 'includes' is intended to be extensive, that is to say, that the word defined shall in addition to its ordinary meaning, have an exteded denotation or connotation. "Foodstuff" means any article used as food. Tamarind leaves and flowers are eatan in India. The seeds are cooked and eaten in India and are also ground into meal (See Webster's New International Dictionary.). The fruit or pod having an acid pulp is usedfor preserves and also made into a cooling drink. It is an essential article of everyday cooking. "Salt, mustard, pepper etc. are articles of food; for though nobody would ordinerily dream of eating them alone, yet they are ariticles tended to form substantial Components of article of food, or to be eaten as adjunets thereto." (Hawkins J. in James v. Jones (1894) 1 Q.B. 304, at p.309). Temarind being thus an aritcle of food would appear to fall within the meaning of the word "foodstuff" in section 2(c) of the Essential Supplies (Temporary Powers) Act, 1946. That being so, the order issued by the District Magistrate, Dharwar under rule 81 of the Defence of India Rules banning its removal to any place outside the district would continue to remain in force by virtue of section 17(2) of the said Act.

O.C.

Sd/- P.M.L.
Remembrancer of Legal Affairs.

U?R. to C.S.D. No.4090. dated 22/4/47.

JPE. 8/5/56. 4copies.

Office of the R.L.A.

The Divisional Traffic Manager, Sholapur has reported to Government that a consignment of 261 of Tevra flour booked from Nasik to Dudhni in Kurundwad State on 21-1-1947 has reached its destination and has been detained at Dudhni and that another consignment of 342 bags of lakh dal flour booked from Loni to Dudhni has been held up in transit at Sholapur. The questions raised for the consideration of the R.L.A. are:-

(1) Whether the Bombay Government can ask the Railway to rebook the consignment from Dhudhni, which is outside the jurisdiction of the Bombay Government; and

(2) Whether in respect of the second consignment withheld at Sholapur any offence has been committed.

Question 1:- It is presumed that Tevra flour is "foodgrains" within the meaning of clause 2(c) of the Bombay Foodgrains (Movement Control) Order, 1943. Though in pursuance of notifications issued under the provisions of the Indian (Foreign Jurisdiction) Order in Council, 1937, the Civil, Criminal and revenue jurisdiction over the Railway lands in Native States is ceded to the Government of India, itx does not amount to be cession of territory or sovereignty over such land and consequently Dudhni will have to be considered outside the Province of Bombay (of Emperor V. Raghunathrao Vinaekrao, 5 B.L.R. p. 873.). By exporting tevra flour from nasik to Dudhni the consignor has committed the offence under section 7 of the Essential Commodities (Temporary Powers) Act, 1946. Since Dudhni is outside the Province of Bombay it would not be legally possible to ask the Railway to rebook the consignment from Dudhni. A panchanama may however be made of the goods and prosecution launched against the consignor.

Question 2 :- The Second consignment which was booked from Loni to Dudhni has been held up in transit at Sholapur. This clearly amounts to an attempt to export foodgrains and would be punishable under section 8 of the Essential Supplies (Temporary Powers) Act, 1946 read with the Bombay Foodgrains (Movement Control) Order,1943.

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4 copies

O.C.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 3259,dated 3rd April 1947.

Office of the R.L.A.

The question for consideration is whether an order can be made under clause (f) of section 3(2) of the Essential Supplies (Temporary Powers) Act, 1946 requring the dairy owners to milk their Mich cattle.

Milk is an essential commodity within the meaning of section 2(a) of the Essential Supplies (Temporary Powers) Act, 1946. Clause (f) of section 3(2) provides for making an order requring any person holding stock of an essential commodity to seel the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstance as may be specified in the order. Obviously this clause has no application to the present case. Sub-section (1) of section 3 which is a general provision and is not controlled by sub-section (2), provides: "The Central Goverament so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices may by notified order xprovide for regulating or prohibiting the xproduction, supply and distribution thereof and trade or commerce therein". To require the dairy owners to milk their milch cattle would be to regulate the production of milk. But since it is very difficult to enforce such an order it might be considered in expedient.

O.C.

Id/- P. M. L.
3/5.
Remembrancer of Legal Affairs.

U.R. to Milk Commissioner, No. 4569 dated the 5th May 1947.

JPE. 9/5/56. 4copies.

L.D.R.I. No. 9885
11-11-1946.

Submitted.

2. The C.S.D. has taken the view that Copra (Cocoanut) would be covered as a foodstuff by the Essential Supplies (Temporary Powers) Ordinance, 1946 (since replaced by the Act of the same title) and that groundnut cake, which is mainly used as a cattle-feed, would be covered by the Bombay Essential Commodities and Cattle (Control) Act, 1946 as under smchedule I thereto, oil cakes used as cattle feed are brought under the said Act. However it appears that some doubt has been feat re. the correctness of the above view since copra, in addition to its use as a foodstuff, is also used in this Province for other purposes such as toilet etc. and groundnut cake is also used as a manure. The R.L.A. is therefore requested to confirm whether the view taken by the C.S.D, is correct.

3. The fact that some part of an Essential Commodity is also used by the Community for other so to say, non-essential or less essential purposes, will not, in any way, take away from that commodity its main characteristic of essential which brings it under the operation of "control to supply" legislation. Copra and groundnut cake may have many other uses in addition to their being used as a foodstuff (in the form of copra or its oil) or cattle-feed respectively. Such other uses of Copra and groundnut cake are not a bar to their coming within the purview of the Control Acts. The view taken by the C.S.D. appears therefore to be correct. These papers may be seen and returned to that Department.

Sd/-
2/1.

A.L.R. - Reply may be:-
Seen & returned. The view taken by the C.S.D. & S.C. is correct.

Id/- R.T.K.
3/1.

R.L.A.- Sd/- D.V.Vyas.
3/1.

U.R. to C.S.D. No.209 of 8-1-1947.

JPE 9/5/56. 4c.

Legal Department
8135 of 9-10-47.

Submitted.

2. Please see the judgment of the D.M.Panch Mahals in Criminal Appeal No. 17/47. The facts of the case are stated in the judgment as follows: Darji Ravji Charturbhai was the head of a family holding a ration card for 8 members. Two members of his family left Godhra rationed area on 1-11-1945. This fact was not reported to the Rationing Office till 2nd July 1946, thereby committing a breach of clause 14(2) of the Godhra Rationing Regulation. The D.M. observes that -

"Godhra Rationing Regulations is not and cannot be deemed to be an order under section 3 of the (Essential Supplies (Temporary Powers)) Act. as it was not an order in pursuance of any rule of Defence of India Rules and contravention of any of these clauses is therefore not directly punishable under section 7. Nor do I think that contravention of a Regulation can constitute contravention of an order, the Bombay Ration
Contravention of an order means doing or omitting to do what is forbidden or is mandatory under the order."

He futher observes that

"In this case failure to report absence from the Godhra Rationed area does not amount to a contravention of the Gothra Rationing Regulations and does not amount to the breach of any of the previsions of the order ------- -- There is nothing in the order which prohibits contravention of Godhra Rationing Regulations. Had there been a provision in the Bombay Rationing Order prohibiting breaches of Godhara Rationing Regulations the matter would have been different. As it is, breach of Godhra Rationing Regulations does not constitute a breah of Bombay Rationing Order etc."

The C.S.D. relying on R.L.A.'s opinion No.344-confl.,

dated 13-8-1946 holds that since the Godhra Rationing Regulation, 1944 has been made under clause 12 of the Bombay Rationing Order, 1943 which has been continued after the expiry of the Defence of India Rules under section 17(2) of the Essential Supplies (Temporary Powers) Act, 1946 breach of any clauses of the Godhra Rationing Regulation 1944 is punishable under section 7 of the Act.

The papers are referred to the H.L.A. with a request to state whether the C.S.D. view above stated (at mA on p. 15 ante) is correct.

3. The Godhra Rationing Regulations is made in pursuance of the provisions contained in clause 12 of the Bombay Rationing Order, 1943. The said clause 12 expowers the Provincial Government to make regulations in respect of any area providing for the conditions subject to which any rationed article may be supplied or obtained for household consumption or for the purposes of an establishment other than establishment consumption or in connection therewith and in particular the kind of ration document which may be issued for each such purpose, the mahher in which such ration document may be used for supplying or obtaining any rationed article, etc. Clause 14(2) of the Godhra Rationing Regulation provides that-

" In the case of departure or absense of the head or any other member of the household from the said areas for more than six ration periods, the head of the household or the member managing the household, as the case may be, shall present the ration card to the Rationing Officer for necessary reduction in the number of units alloted to the household within one hundred days from the date of such departure or absense."

Since this clause prescribes the manner in which

which the ration document may be used it is validly made under clause 12 of the Bombay Rationing Order,1943. The D.M.Panch Mahals lays too much stress on the absence of any provision contravention of the Godhra Rationing Regulation in the Bombay Rationing Order. It is no doubt true that there

Office of the R.L.A.

The view expressed at 'A' of the C.of R's office note at p.15 ante is correct.

2. The order of acquittal passed by the District Magistrate, Panch Mahals is clearly illegal. The Godhra Rationing Regulations, 1944, have been framed under clause 12 of the Bombay Rationing Order, and consequently the breach of clause 14(2) of those Regulations would be a beach of the Bombay Rationing Order itself, and would be punishable under section 7 of the Essential Supplies (Temporary Powers) Act, 1946. Where a statute enables an authority to make regulations, a regulation made under the Act becomes for the purpose of obedience or disobdience a provision of the Act: (Willingale v. Norris, (1909) 1 K.B. 57 at p.64). Therefore, the Godhra Rationing Regulations 1944, are a part of the Bombay Rationing Order, 1943, are saved by section 17(2) of the Essential Supplies (Temporary Powers) Act, 1946, read with section 5 of the Essential Supplies (Temporary Powers) Ordinance, 1946, and a breach of clause 14 of the said Regulations is punnishable under section 7 of the Essential Supplies (Temporary Powers) Act. In this connection, attention is invited to the judgment of the Bombay High Court in Criminal Revision Application No,230 of 1944 wherein a person who failed to deliver the ration card to the Rationing Officer for cancellation was held to have contravened rule 4D of the City of Bombay Rationing Regulations, 1943, and was convicted. The order of acquittal passed by the District Magistrat Panch Mahals, is wrong in law and an appeal should be filed against it in the High Court.

O.C.

Id/- D.V.V.
Remembrancer of Legal Affairs

U.R. to C. of R.,No. 7336 dated the 17th July 19471

JPE. 9/5/56
4 copies.

Submitted:

2. The D.M. Ahmedabad in his letter at p.1 ante observes as follows:-

"All offences for contravention of orders issued under Defence of India Rules and committed after the expiry of the said Rules in September, 1946, continued to be punishable till November, 1946, under Section 8 of Ordinance XVIII 1946, and thereafter under section 7 of Act XXIV (Essential Supplies Temporary Powers Act). All orders issued under Defence of India Rules are to-day in force by vitue of section 17(2) of the said Act, while section 7 the penal clause reads as under:-

"If any person contravenes any order made under section3, he shall be punishable with imprisonment etc." All the orders which are now in force by virtue of sub-section 2 of section 17, nor does it provide penalties for contravention of orders deemed to be made under the said Act. This would mean that most of our important Control orders continue in force without a convicting clause. A comparison of section 7 of the Act with that of the section 8 of the Ordinance and a similar comparison of section 9 of the Act with the section 10 of the Ordinance very clearly brings out the lacuna which appears to exist in section 7 of the Act. If the above views come to be held as correct and judicially accepted, it would entail a very serious consequence. I have, therefore, to request you to examine this matter and let me know if my presumption is correct.

Are obviously not the orders made under Sec. 3. Section 7 does not Comp Contemplate providing penalties for orders which are so by virtue of Sec. 17

The R.L.A. is requested to advise on the point raised by the D.M. Ahmedabad.

3. The question has to be considered from two points (1) where the orders under the Defence of India Rules specifically provided for punishments for their breaches and (2) where they do not so provide, but are punishable under the general clause (rule 81(4) of the Defence of India Rules. There will be no difficulty so far as orders covered under (1) above are concerned due to the penal clause therein. Orders coming under (2) above are covered by R.L.A.'s opinion No. 7336, dated the 17th July, 1947 wherein it was held that a breach of the Godhra Rationing

Regulation, 1944 is puhishable. If a temporary Act be continued by a subsequent one or enm expired Act be revised by a later one all infringments of the provisions contained in it are breaches of it rather than of the renewing or reviving statute. (R.V.Morgan 2. Stra. 1066; Shipman V. Hanbert; 4 T.R. 109; Dingly V. Moor, Cro. Eliz. 750; Maxwell on Interpretation p.349). Consequently breaches of orders made under the Defecne of India Rules continued in force by virtue of sub-section (2) of section 17 of the Essential Supplies (Temporary Pewers) Act, 1946 read with section 5 of the Essential Supplies (Temporary Powers) Ordinance, 1946 will be punishable under sec. 8 of the said Ordinance rather than under the Essential Supplies (Temporary Powers) Act. The D.M. Ahmedabad's statement that most of the important orders under the Defence of India

JPE. 9/5/56. 4copies.

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In his letter at p.1 ante the D.M.Ahmedabad has stated that although orders issued under the Defence of India Rules are saved by section 17(2) of the Essential Supplies (Temporary Powers) Act, 1946 the contravention of any of those orders would not be punishable under section 7(1) since that section provides penalty for the contravention of any order made under section 3 and not also for that of any order deemed to be made under that section as provided in section 8 of the Ordinance XVIII of 1946.

There seems to be little or no substance in the point raised by the District Magistrate, Ahmedabad, It is true that section 8 of the Ordinance XVIII of 1946 provided that "if any person contravenes any order made or deemed to be made under section 3 he shall be punishable etc." and that section 7(1) of the Essential Supplies (Temporary Powers) Act, 1946 provides that if any person contravenes any order made under section 3, he shall be punishable etc."; but the absense of the words "or deemed to be made" in the latter provision does not appear to be material, for the orders made under the Defence of India Rules are saved by section 17(2) and are deemed to be made under this Act i.e. under section 3. and would be punishable under section 7(1). Consequently those orders are as good as being made under Sec. 3

O.C.

Id/- D.V.V.
Remembrancer of Legal Affairs.

U.R. to the office of the Controller of Rationing, No.8397 dated the 14th August 1947.

JPE. 9/5/56. 4 copies.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the power of entering premises under clause (j) of section 3(2) of the Essential Supplies (Temporary Powers) Act,1946, impàies power to break open a lock if necessary.

The principle that "every man's house is his castle" shall not extedd to protect any person who flies to his house to prevent a lawful execution, and to escape the ordinary process of law; and therefore in such cases, after denial on request made, the Sheriff may break the house (see Broom's Legal Maxims p.285). Applying that prinicple it appears that although there is no specific provision in the Essential Supplies (Temporary Powers) Act, 1946, for breaking open the lock, there would be no legal objection to holding that the power of entry under clause (j) of section 3(2) incàudes power to break open a lock after denial on request made. For the avoidance of all doubts, it may be desirable to make am order regarding entry and search on the lines of section 48 of the Code of Criminal Procedure.

O.C.

Id/- P. M. L.
3/9/1947.
Remembrancer of Legal Affairs.

U.R. to C.S.D. no. 9009, dated the 5th September 1947.

JPE. 9/5/56.
4 copies.

Office of the R.L.A.

The Provincial Labour Advisory Board is of the opinion that in view of the finding of the Textile Labour Inquiry Committee that night work has a deleterious effect on the health and social life of the workers, the three shift working involving work after midnight should be avoided, that the possibilities of third shift working consistently with certain safeguards are very severly limited; but that whenever such a third shift is either continued or taken up in future it should be subject to a permit or a license from a special committee appointed by Government for this purpose, of which the Chief Inspector of Factories will be a member.

The R.L.A. is requested to advise whether the proposed licensing system can be introduced under the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946.

Under clause (a) of section 3(2) of the Essential Supplies (Temporary Powers) Act, 1946 an order may be made providing for regulating by license permits or otherwise the production or manufacture of an essential commodity But the licensing system proposed to be introduced in respect of the third shift is intended to regulate not the production or manufacture of cloth but the use of labour for the third shift. Consequently it would not be quite appropriate to resort to clause (a) of section 3(2) of the Essential Supplies (Temporary Powers) Act.

Consequently an order can be made regulating by licenses or Permits or otherwise the production and manufacture of cloth, which is an essential Commodity.

O.C.

Id/- P. M. L.
2/9
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.8913 dated 2/9/47.

JPE. 9/5/56. 4 copies.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether it is legally feasible to impose a ban on the export of groundnut cake out of the Province of Bombay.

Attention is invited to the R.L.A's opinion No. 5499, dated 28-5-1947 where the legal position in respect of the export of groundnut cake is examined. The Indian Independence Act, 1947, has not altered the aforesaid legal position as section 297 of the Government of India Act, 1935, has in no way been modified. Consequently the Bombay Government will have no power to impose any ban on theexport of groundnut cake. It is doubtful whether the Central Government would agree to include groundnut cake as an essential commodity under the Essential Supplies (Temporary Powers) Act, 1946, since such inclusion would not fit in with the preamble of the Act. In the circumstance the imposition of any ban on the export of groundnut cake from the Province of Bombay does not appear feasible.

Id/- P. M. L.
17/9

Remembrancer of Legal Affairs.

U.R. to A.&R.D.D., No. 9323 dated 19th Sept. 1947.

JPE. 19/5/56. 4 copies.

Office of the R.L.A.

It appears that in reponse to an appeal made by the Prime Minister for funds in aid of refugees from Pakistan, the Suburban Refugee Relief Committee intends to hold a function on the 29th instant at Bandra Gymkhana, the entire proceeds of which would be utilised in the purchase of blankets and warm clothings for the refugees. It is proposed to arrange at the function exhibition stall, fisherman dance, auctions, games and dances, and the admission to the function would be by tickets. The Mayor of Bombay and in all probability Chief Justice Chagla would be the guests of honour. The committee proposes to give light refreshments which will be provided by the local Bandra caterer and the eatables would be potato wafers, kababs, powdered icecream, chees, biscuits; and those who will partake of such refreshments will pay for every item. The number of persons expected to participate in the function will be approximately one thousand. Mrs.K.M. Gandhy, Honorary Secretary of the Suburban Refugee Relief Committee, has applied to Government to grant a license to sell the refreshments at the fuction. The Question raised for the consideration of the R.L.A. is whether the service of refreshments at the function would be hit by the Civil Supplies Department Notification NO.390/F.A.C./VI, dated the 24th January 1947.

It is admitted in the letter at page 1 written by Mrs. K.M.Gandhy, Honorary Secretary, Suburban Refugee Relief Committee, that the Committe is organising a function on the 29th instant at Bandra Gymkhana. The refreshments proposed to be served to the visitors would be at this function and the number of persons who are likely to be served with such refreshments would be more than 25 persons. The fact that these persons would pay for themselves is immaterial so long as the function

·3PE 9/5/56
4 copies.

is arranged by the Committee and the refreshments are served at such function. Consequently the service of refreshments at this function would be hit by the C.S.D. Notification No.390/F. A.C./VI, dated 24th January 1947 which prohibits service of eatables to 25 or more persons at a function. The R.L.A's opinion No.374, dated 13-1-1947 will have no application to the present case since unlike an exhibition sale the entertainment proposed to be held in the present case is a function on the admission of the organisers themselves; and the prevision of eatables by a caterer is an integral part of the function.

O.C.

Id/- P. M. L.
28/11
Remembrancer of Legal Affairs.

U.R. to C.S.D., No.11369, dated the 28th November 1947.

JPE 9/5/56
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Office of the R.L.A.

Filing of an appeal.

It has been already decided that an appeal should be filed in the High Court in this case and sanction for the purpose has been accorded by G.R. L.D.No.11643, dated the 5th December 1947. It is expected to have an authoritative decision from the High Court on the point in issue.

The record of the case is returned herewith.

O.C.

Id/- P. M. L.
6/12
Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 11765, dated the 8th December 1947.

MPE 9/5/56.
4 copies.

Office of the R.L.A.

It appears that the accused was prosecuted for attempting to contravene Government Order No. W.A.R. 390/VI, dated the 6th May 1946 on the following facts :-

The house of the accused was raided on 11th April 1947, in the evening when cooking was going on. About 280 sweet balls were ready and pulse, rice and vegetables already cooked was sufficient for feeding 70 to 80 persons. The panch witness corroborated that evidence for the prosecution but admitted that there was no one sitting for dinner nor any seats were placed for invitees. At the house there were ladies but they were there for religiens rites according to the panch witness. The Sub-Divisional First Class Magistrate, Broach City who tried the case acquitted the accused observing :-

"There is no evidence on record to show if any person was invited to dine. What prosecution has done is to attach food stuffs which may be meant for two day's consumption. So long as there is no evidence to show that 25 persons or more were to dine that day at the house of the accused. the accused could not be convicted for cooking more food. as the order for the breadh of which prosecution is launched, does not make cooking of ~~food which prosecution is launched, does not make cooking of food~~, which could feed more than 25 persons, an offence".

The question for consideration is whether the order of the Magistrate is correct.

Under section 8 of the Essential Supplies (Temporary Powers) Act, 1946, any person who attempts to contravene or abets a contravention of any order made under section 3, shall be deemed to have contravened that order. The Government Order No.W.A.R.390/VI dated the 6th May 1946, is an order deemed to have been made under section 3. Consequently, the abetment or attempt to contravene that order would be punishable.

An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by an act cannot constitute an offence. Preparation consists in

in devising or arranging the means or measures necessary for the commission of the effence. It differs widely from an attmpt which is the direct movement towards the commissio after preparations are made (Lakshmi Prasad, 1922, 23 Cr.L.J. 108) The question whether a certain act is merely one of preparations or one committed in the course of an attempt is a question of fact, depending upon surrounding circumstances which must be taken into consideration. (R.Mac Crea, 15 All 173) A recently suggested and workable rule is that the accused must have done "an act which is a step towards the commission of that specific crime and the doing of such act can have no other purpose than the commission of that specific crime (Turner, in 5 Camb L.J. at p. 236; Broom's Legal Maxims p.213).

The effence of contravention of the Government order No. W.A.R. 390/VI, dated the 6th May 1946, consists in serving, distributing or providing for consumption eatables to twenty five or more persons. There was no attempt to serve nor to distribute for consumption eatables since no guests were seated nor present. The only question for consideration would be whether there was any attempt to provide for consumption eatables for twenty five or more persons. It is undisputed that there was cooked food ready sufficient enough for more than 25 persons. The Magistrate's observation that "the cooked food may be for two day's consumption" does not appear to be well founded. Pulse, rice and vegetables already cooked was sufficient for feeding 70 or 80 persons and this kind of food is ordinarily meant for immediate consumption. The act of obtaining food grains would certainly be a prparation, for it may stop there. But in the present case food enough for 70 or 80 persons was actually prepared. Would it not be an overtact having no other purpose than contravening the order ? If not, it is inconceivable at what stage the attempt to provide for consumption eatables for 25 or more persons actually begins. No sensible person gets food cooked for wasting it. Part of the food was not of the kind which could be preserved for more than one day. It appears that there was also a religious ceremony at the

house of the accused and it is common knowledge that sweet balls of such quantity are generally prepared for feeding the guests. These surrounding circumstances which the Magistrate has failed to consider, point to one fact namely that the accused must have got so much food cooked to provide for consumption eatables to more than 25 persons. It is curious that the Magistrate has made no reference to the accused's statement, It is not known what explanation was offered by the accused. It is likely that the accused's statement would be very helpful in determining whether the cooking of so much food was merely the stage of preparation or would amount to an attempt. The Supply Department (Enforcement Branch) should call for the record of the case to enable the R.L.A. to give a definite opinion in the present case.

O.C.

Id/- D.V.Vyas.
Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 7827, dated the 29th July 1947.

JPE. 9/5/56,
4 copies.

Office of the R.L.A.

It appears that the Magistrate asked a general question tothe accused as to what he had to say and the accused replied "The cooking for 20 persons was ordered." Ladus were for three to four days. I have not committed any offence." No question was asked to the accused as to whether the other food namely rice, dal and vegetables could have been sufficient to feed as many as 70 or 80 persons. The cook who was examined for the prosecution says that the food prepared was meant to feed 20 persons. The other witnesses for the prosecution give a rough estimate on the basis of pots usdd for cooking of the quantities of rice, pulse and potatoes. In the circumstance, it appeams that the evidence for the prosecution is discrepant and unsatisfactory and consequently no further action appears advisable in this case. Had the evidence been consistent and satisfactory the case would have undoubtedly amounted to an attempt for serving or providing for consumption eatables to 25 or more persons, since almost all the ingredients of the offence were present, and its actual commission was interrupted by the intervention of the police. An attempt has been defined as anm intentional preparatory action which fails in object, which se fails through circumstance independent of the person who seeks its accomplishment. It is an act done with intent to commit the crime and forming part of a series of acts which would constitute its actual commission if it were not interupted. The point at which such a series of acts begin cannot be defined; but depends upon the cicumstances of each particular case. The actual consummation of the criminal design was interrupted in this case, and except for the failure of some, all the elements of a substantive crime were present.

2. As a rule cases of this kind can, therefore,be brought within the scope of an attempt. It is, therefore, unnecessary to make preparation for committing the offence itself an offence. Preparation is a wide term and if it is made an offence, it may lead to undesirable consequences and undue harasment of the public.

O.C.

Id/- P.M.L. 3/9/1947.
Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 9010, dated the 5th September 1947.

JPE. 9/5/56.
4 copies.